

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1127 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

FIROZ FAREEDUM IRANI

Versus

STATE OF GUJARAT

Appearance:

MR AD SHAH for Petitioner

MR MA BUKHAR, APP for Respondent No. 1

SERVED for Respondent No. 3

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 13/10/97

ORAL JUDGEMENT

On 25.7.1997 or thereabout, rehearsal and shooting was in progress of Gujarati Film " DESH JOYA DADA PARDESH JOYA". Shooting has commenced since 14.6.1997. As a part of the story & script, there was a scene where a firearm was to be used. Accused Mr. Irani was about to fire it when one Rajdeep was to intervene

and raise the barrel of the gun towards sky, but none the less, the firearm was to be fired.

As a part of the scene, at the back of Rajdeep, one Narayan Rajgor was supposed to stand, who eventually got injured. He was instructed as a part of the scene to run towards left. This was obviously as a precaution that he may not receive any injury when said Rajdeep was supposed to deflect the gun and make the fire ineffective by raising the barrel of the gun towards sky.

Unfortunately, said Shri Rajgor, instead of running towards left, ran towards right. Film unit has taken sufficient care by using only dummy cartridges known as " blank cartridges ". Firearm used is Double Barrel Gun. As a result of said mistake on the part of Shri Rajgor, namely instead of running towards left, he ran towards right, he received injury just below the left eye on temporal region.

Said Shri Rajgor was fairly aged about more than 74 years and was promptly taken to local hospital at Halol and from there was shifted to Baroda and one Dr. Gehlot of Mayo Hospital was treating him. He succumbed to the injuries after 3 days.

On the next date of incident i.e. 26.7.1997, police was informed stating all the aforesaid facts. Argument on behalf of the petitioner is, therefore, that this will be covered by sec. 80 & 87 of the IP Code providing for general exceptions. Sec.80 of the IP Code reads as under :-

"80. Accident in doing a lawful act :-

Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution."

Section :87 of IP Code reads as under :-

"87. Act not intended and not known to be likely

to cause death or grievous hurt, done by consent:- Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm."

Illustrations below respective sections are also equally of importance. In the first one, there is a reference of a hatchet; the head flies off and kills a man who is standing by and said act under proper caution is held to be excusable and not an offence as per sec.80 of the IP Code.

Illustration below sec.87 refers to fencing making between A & Z on agreement for their amusement. While playing fairly if A hurts to Z, no offence is committed.

These two sections read along with those illustrations, would clearly cover the present case.

The investigation, nodoubt, is virtually over and that has prompted Mr. Bukhari to submit that let the chargesheet be filed and matter be argued before the trial court. However, FSL report which was awaited on previous occasion, having received, it becomes clear that on account of use of blank cartridges, the material which would be found in the body, would be like pallet or any small pieces from cartridges and may not penetrate the bone. They would, at the best, penetrate the skin, but not break the bones. Unfortunately, because of old age of the deceased, there was a fracture and even brain matter had come out. These are the acts which were never intended and in view of the facts stated in the FIR and fact that the use of blank cartridges, all possible precaution were taken and but for the deceased running towards right, though he was instructed to run towards left, obviously the incident would not have happened.

In this background, it is not possible to hold that any offence is committed. Original papers are, therefore, returned back. So far as petition is concerned, it is allowed. The proceedings arising from CR No. I-250/97 of Halol Police Station, are hereby quashed and set aside. Rule is made absolute.

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